

CORRESPONDENCE

THE EDITOR, *Dalhousie Review*

Dear Sir,

Professor Mallory is right when he states, in his article, "Constitutional Amendment Now", in the April issue of THE DALHOUSIE REVIEW, that our constitution has yet "to prove its adequacy in the kind of exhausted world which peace will bring". In fact it has not proved its adequacy to deal with changing conditions at any time. He is also right in saying that its inadequacy lies in the nature of our federal system itself. No doubt the federal system was the best, possibly the only, method of bringing the Provinces together in 1867. A union, having regard to the "important cultural and social differences" mentioned by Prof. Mallory, was then impossible. Whether those differences are now of sufficient importance to outweigh the cultural, social and economic needs of Canada as a nation may be strongly questioned.

In every confederation of states, emergencies and changes of conditions arise which compel surrender to the central power of the rights and privileges of the constituent states in the interest of the federation. The best remembered and most tragic instance of this is the secession of the Southern American States and the resultant war.

In Canada a reallocation of legislative powers is emergent and inevitable. So far I have heard and read only suggestions of a patch-work amendment of the B.N.A. Act, and none to the suggested patches is adequate to do more than conceal temporarily the holes.

The two methods mentioned by Prof. Mallory are no better. The one he admits to be piecemeal; the other is limited to the period of reconstruction, and to the problems peculiar to that period. All such amendments will be subject to interpretation by the courts with the same unsatisfactory results that have followed judicial interpretation of the Act as it now stands.

No real good can be accomplished by patching up what Prof. Mallory rightly calls a strait jacket. We need a new garment which will be truly protective. The B.N.A. Act should be repealed and a new constitution adopted, either by statute of the British Parliament or by such other means as may be deemed advisable. And this constitution should create a union, not a mere federation.

This constitution, however it is brought into being, should vest *all* legislative power in the Dominion Parliament, with power to delegate to the Provincial Legislatures such rights of legislation as may meet their respective local needs, cultural, social or economic; just as at present Provincial Legislatures delegate legislative powers to municipal bodies.

Identical powers would not necessarily be granted to every Province. Cultural and social differences could be preserved by granting special powers to any Province whose cultural, social or economic systems are peculiar to it.

The great advantage of this system is that when a subject-matter of legislation, which has been granted to a Province, subsequently

proves to be of nation-wide importance or application, the power to legislate thereon may be resumed by the Dominion Parliament. It would not need a war or a national or international emergency to enable the Dominion Parliament to deal effectively and permanently with any change in conditions which may arise.

One weakness of this constitution is the possibility of a Province with a large representation in Parliament demanding and securing a grant of power which is not in the national interest. Such a contingency, however, would almost surely result in the other Provinces uniting in opposition to the grant, and no one Province is strong enough in Parliament to defy all the others, as witness what occurred in 1896, when the Conservative Government was defeated on the issue of separate schools in Manitoba.

Prof. Mallory states the problem as being "to bring our machinery of government into line with our new concept of its purposes".

This problem, in all its aspects, is capable of solution under the constitution I advocate, if Parliament exercises its power of delegation wisely.

It may be that in advocating a change that may well be considered revolutionary I am showing more courage than discretion, and I appreciate the difficulties facing any attempt to secure such a constitution, but I do not think they are any greater than those met by "the Fathers" when confederation was accomplished.

Those difficulties were solved by compromises, which are to some extent responsible for the present state of affairs. Such a solution is to be avoided if at all possible, but the constitution I advocate is sufficiently elastic to allow for all necessary and beneficial compromises.

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